

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MICHAEL L. BAILEY

PLAINTIFF

VS.

CIVIL ACTION NO. 1:04CV308-JAD

IDG USA, LLC

DEFENDANT

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

The court has considered the defendant's motion for summary judgment (Doc.49), the response, reply, attachments and briefs. The parties are in agreement that the plaintiff can establish a prima facie case of age discrimination in his termination. They are also in agreement that the defendant has proffered a legitimate nondiscriminatory reason for the discharge. The defendant contends that the plaintiff cannot provide proof that its tendered nondiscriminatory reason is a pretext. The court finds that there are jury issues regarding whether the proffered reason is pretextual and the ultimate question of whether the discharge was a result, in whole or part, of discrimination based on the plaintiff's age. There are clearly genuine issues of material fact which cannot be resolved by summary judgment. F.R.Civ.P. 56. In any event, the court has the discretion, which it should exercise here, to allow the plaintiff's claims to proceed to trial. *See, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) ("Neither do we suggest ... that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.").

IT IS ORDERED that the defendant's motion for summary judgment is denied.

SO ORDERED this the 20th day of December, 2005.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE